IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.729 OF 1990

The Board of Trustees of the
Port of Bombay a Body Corporate
Constituted under the provisions
of the Major Port Trusts Act,
1963, as amended by the Major
Port Trusts (Amendment) Act,
1974 having its principal place
of business at 'Vijay Deep'
Shoorji Vallabhdas Marg,
Bombay-400 038. ..Appellant
(Orig.Plaintiff)

Versus

The Official Liquidator,
High Court, Bombay, Liquidator
of Chunilal Manilal Pvt. Ltd.
(in liquidation) having its
office at Bank of India Building,
70-80 Mahatma Gandhi Road,
Bombay-400 001. ..Respondent
(Orig.Defendant)

Mr.Makhija i/b. Mulla and Mulla & CBC for the Appellant
None for Respondent

CORAM : S.R. SATHE,J.
DATED : 09/08/2007

ORAL JUDGEMENT :-

1. The Appellant-original Plaintiff in Short Cause Suit No.3235 of 1973 has preferred this appeal against the judgement and order passed by the Judge, City Civil Court, Bombay whereby the Plaintiffs suit for recovery of possession of the suit premises and arrears of rent and compensation was dismissed with costs. For the sake of convenience, hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this appeal are as under :-

Plaintiffs are the Trustees of the Port of Bombay. They leased out the suit property described in detail in Exh-A attached to the plaint to M/s.Chunilal Manilal Private Ltd.(original defendants) at monthly rent of Rs.244.82 paise. However, subsequently, defendants agreed to pay compensation at the revised rate of Rs.366.88 paise per month with effect from 01/10/1968. On 11/10/1971, Plaintiffs issued notice to the defendants and called upon to quit and deliver vacant possession of the suit premises at the expiration of the month following the then current month of the tenancy. As defendants failed to hand over the possession and comply requirements in the notice, Plaintiffs filed suit for recovery of possession of the suit premises and arrears of rent and compensation.

3. The defendants filed their Written Statement and opposed the suit claim. They agreed that initially rent was fixed at Rs.244.82 paise and subsequently, it was agreed to pay compensation at Rs.366.88 with effect from 01/10/1968. According to defendants, Plaintiffs proposed that defendants would be allowed to change the

user of the land for running a factory in addition to storage of goods and maintaining office, subject to defendants agreeing to terms and conditions including condition that defendants should pay revised compensation of Rs. 425.85 paise per month. The defendants expressed their willingness to pay the rent or compensation at enhanced rent. Estate Manager of the Plaintiffs informed willingness to grant defendants a lease in respect of the plot of land for a period of 15 months at the rate of Rs.517.57 paise. Plaintiffs also claimed from the defendants premium of Rs.1000/- by way of penalty for unauthorized change in user of the plot. The defendants replied that they are not willing to accept the said terms. It is the contention of the defendants that as a result of the same, Plaintiffs issued notice and terminated their tenancy.

4. The defendants, therefore, contended that they are not liable to hand over the possession of the plot on the basis of the said notice dated 11/10/1971. They also challenged Plaintiffs' right to recover the possession of the plot of land from the defendants for carrying out or fulfilling any objects of the Plaintiffs as laid down in Port Trust Act. Hence, defendants prayed for the dismissal of the suit.

5. On these pleadings, learned Trial Judge framed issues. In order to prove their claim on behalf of the Plaintiffs their officer V.G. Kulkarni was examined. Plaintiffs also produced copy of the notice to quit. The defendants did not adduce any oral evidence.

6. During the pendency of the suit, Official Liquidator, High Court Bombay was substituted in place of original defendants-company in view of the order passed by the Court on 18/07/1986 to wind up company and appointment of official liquidator.

7. From the perusal of the judgement of the learned Trial Judge it appears that during the course of arguments only point which was agitated before him was the legality and validity of the notice issued by Plaintiffs to defendants under section 106 of the Transfer of Property Act.

8. It was contended that though open land alongwith structure standing thereon was leased out to defendants, Plaintiffs terminated tenancy only in respect of the open land and as such the same was not legal and valid. The learned Trial Judge also came to

the conclusion that termination notice was given only in respect of part of premises i.e. open land and as such, the same was not legal and valid. He, therefore, dismissed the Plaintiffs' suit.

9. Being aggrieved by the said judgement and order, Plaintiffs have filed the present appeal. On the date of hearing of the appeal none remain present on behalf of the defendants. Hence, I heard the argument of Shri Makhija, learned Advocate for the Plaintiffs. The only point which is canvassed by him is that the observation made by the learned Trial Judge that notice issued by Plaintiffs terminating defendants' tenancy was not legal and valid is erroneous. According to him, notice in question was issued in respect of the premises leased out to defendants. It was not necessary to give description of every part and parcel of the premises leased and that is not contemplated by section 106 of Transfer of Property Act. In support of his proposition, he has drawn my attention to a case **Board of Trustees of Port of Bombay V/s. Corn Products Company (India) Ltd. 1995(2) Maharashtra Law Journal 449** wherein this Court (CORAM : K.G. SHAH, J.) has made following observations :-

" Once the landlord terminates tenancy in respect of the lease, implied therein is that he has terminated the lease in its enterity. He has terminated the lease in respect of every part of the premises and landlord is not required to specify every inch of the property and every item of the property separately for saying that he terminates the tenancy in respect of that every inch of the property and every item of the property."

.....

What is to be terminated is lease and in the notice to terminate the lease, suffice would be, if the lessor gives description of the property, the lease in respect of which he intends to determine. He is not to give a catalouge or a list of item of property standing on the land which is the subject matter of the lease and to say specifically in respect of each item that he terminates the lease with respect to that item or property."

Relying on the above decision of this Court

Shri Makhija, learned Advocate for the Plaintiffs submitted that in the instant case though it appears that in the suit notice only plot number is mentioned, that does not mean that lease in respect of the entire suit premises has not been terminated. He, therefore, submitted that the suit notice was legal and the order passed by the learned Trial judge is not legal and correct. He, therefore, submitted that appeal be allowed and decree for possession and recovery of rent be passed.

10. The only point to be decided in this appeal is whether the suit notice is legal and valid. Whether it can be said that by virtue of the said notice Plaintiff had terminated tenancy only in respect of the part of leased property. Naturally, in order to decide this issue it is first necessary to see what is the leased premises. For that purpose reference has to be made to lease deed which is at Exh-B. Therein the description of the suit property is given as under :-

> *“ Plot No.21B Estate Mazgaon reclamation as shown on the plan No.EM/SS 1030 of 1961 annexed hereto, together with the building or buildings, now or at any time hereafter, standing on the said plot.*

Area 655.15 sq.meters or thereabouts."

11. So, from this description it does appear that not only open land but the structure standing thereon was also leased. However, from the clause-13 of the lease deed it is also very clear that it was agreed that while quiting the premises tenant shall at his own expenses is required to remove any building or structure erected by him thereon together with any plant or machinery and re-instate the land to its original condition.

12. In order to decide the point involved, it is also essential to see the contents of the suit notice which is produced at Exh-D. The relevant portion is as under :-

> *" On behalf of the Trustees of the Port of Bombay, I have to give you this notice and to call upon you to quit, vacate and deliver vacant and peaceful possession of plot No.21-B admeasuring 655.15 sq.meters on the Mazgaon Reclamation Estate, now in your occupation (and which premises are more particularly described hereunder) at the expiration of the month next,*

following the current month of your tenancy."

From the perusal of the above notice, it appears that it is not specifically mentioned therein that defendant is directed to hand over the possession of the plot together with structure standing thereon. However, when it is mentioned that defendants should hand over the possession of Plot No.21-B, it obviously means that possession of the entire plot alongwith whatever structure thereon is to be handed over to the Plaintiffs. By no stretch of imagination it can be said that the Plaintiffs had an intention to allow the defendants to occupy the structure standing thereon. When possession of plot No.21-B which was leased out was asked to be delivered, it must be held that defendants-tenants were called upon to hand over the possession of the entire plot and the leased premises in its enterity. If there would have been any intention to allow the defendants to continue the tenancy in respect of the structure standing on the plot then certainly Plaintiffs would have mentioned accordingly. What is more to be noted is that it is not even the defendants case that they gave reply to the said notice and contended that the tenancy is terminated only in respect of the open portion of the plot and not in

respect of the structure standing thereon. The material on record and the conduct of the defendants also do not indicate that they had understood the said notice in such fashion. It appears that it is only the legal brain that has tried to make such distinction. But under the facts and circumstances of the case such distinction can not be made and it does not stand to reasons. When plaintiffs had called upon the defendants to hand over plot No.21-B which was the property leased out, it obviously means that entire plot with structure standing thereon has to be delivered and tenancy was terminated in respect of the entire leased premises. So, applying of the ratio of the above cited ruling to the present case it is very clear that suit notice issued by Plaintiffs to defendants was legal and valid and the finding recorded by the learned Trial Judge that the suit notice is not legal is not correct.

13. It has come in the Plaintiffs' evidence that even after the filing of the suit original defendants paid compensation at the rate of Rs.366.88 paise per month and other dues till 30/06/1989. The defendants also paid Maharashtra Education Cess in respect of the suit premises till March-1989. Hence, defendants are liable to pay the future compensation and the

Maharashtra Cess.

14. In view of the above discussion it is necessary to set aside the order passed by the Judge, City Civil Court Bombay. Hence, I pass following order :-

O R D E R

Appeal is allowed.

Order passed by the Judge, City Civil Court Bombay dismissing the plaintiffs' suit is set aside.

Defendants to deliver the possession of the suit property to Plaintiffs within one month from today.

Defendants to pay Plaintiffs compensation of the suit property at the rate of Rs.366.88 paise per month from 01/07/1989 till the delivery of the possession as suit property to the Plaintiffs.

Defendants to pay Plaintiffs Maharashtra Education Cess in respect of the suit property from 01/04/1989 till the delivery of possession of the suit property.

Defendants to pay Plaintiffs costs of this appeal and bear their own.

(S.R. SATHE,J.)